

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:07cv157**

**GREAT LAKES REINSURANCE (UK))
PLC; and WARTA INSURANCE &)
REINSURANCE CO.,)**

Plaintiffs,)

Vs.)

ORDER

**ANTHONY R. PORTER; BANK OF)
AMERICA, N.A.; and FIRST)
INSURANCE FUNDING CORP.,)**

Defendants.)

THIS MATTER is before the court on the court's own Motion for Case Status. Review of the pleadings reveals that this action was filed April 25, 2007, and that defendant Bank of America, N.A., answered the Complaint on September 17, 2007. Despite the passage of more than 120 days from issuance of the original summons, defendant Anthony R. Porter has not been served. Plaintiffs caused to be reissued summonses for Mr. Porter on August 16, 2007, November 17, 2007. And January 17, 2008. Such re-issuances of summonses were not, however, accompanied by a motion made in conformity Rule 4(m), which provides:

(m) Time Limit for Service.

If a defendant is not served within 120 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).

Fed.R.Civ.P. 4(m)(as amended December 1, 2007).

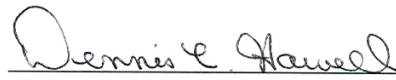
By causing to be issued summonses without court approval, it would appear that plaintiffs are, possibly, confusing federal and state procedure, which allows for the Clerk to issue *Alias and Pluries* summons without court Order. At this point, with 120 days having passed, the court needs a Rule 4(m) motion that shows excusable neglect under Rule 6(b) to reopen the time for service (such as a mistake as to applicable procedure) and shows good cause under Rule 6(b) and 4(m) for enlarging the time to serve the Complaint (such as multiple attempts at service, defendant dodging service, etc.). If such showing is sufficient, the court may enter a *nunc pro tunc* Order.

ORDER

IT IS, THEREFORE, ORDERED that the court's own Motion for Case Status is **GRANTED**, and plaintiffs' shall file an appropriate motion within 10 days.

The Clerk of this court is respectfully directed to reassign this case to Hon. Lacy H. Thornburg, United States District Judge, and list the undersigned as the referral judge.

Signed: February 12, 2008

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Dennis L. Howell
United States Magistrate Judge

